

Competition Policy Review

Northern Territory

National Competition Policy Report

concerning the Regulation of

Escort Agents and Sex Workers

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Competition Policy and National Regulatory Reform Issues relating to Escort Agents and Sex Workers - *Prostitution Regulation Act*

1. Summary

It appears that continued regulation of escort agents and sex workers is justified in the public good without any amendment to the *Prostitution Regulation Act*.

The *Prostitution Regulation Act* restricts, as described in Part 7, the activities of escort agents and the sex workers who wish to work through escort agents.

It also contains some general restrictions concerning all sex workers.

However:

- (a) the objectives (as described in Part 8) for such restrictions appear to remain current; and
- (b) the restrictions in the Act appear to be the most appropriate mechanism for achieving those objectives.

This Report needs to be read noting that issues concerning brothels are not to be covered. They are being dealt with as announced in the then Attorney-General's statement of 23 April 1998 to the Legislative Assembly.¹

¹ This announcement was made by the Hon Shane Stone, MLA. when tabling the Report "Review of the First Five Years of the Prostitution Regulation Act". The Report was subsequently debated on 12 August 1998.

2. Competition Policy

2.1 *Formal Terms of Reference*

The terms of reference, numbered 1-3 and 5-8, were established by the Northern Territory Attorney-General's Department at the time when the Attorney-General was responsible for the administration of the legislation. Reference 4 was requested to be added to the terms of reference by the Department of Industries and Business (which became responsible for the administration of the Act in August 1999).

The terms of reference are:

1. The review of the *Prostitution Regulation Act* shall be conducted in accordance with the principles for legislation review set out in the Competition Principles Agreement. The underlying principle for such a review is that legislation should not restrict competition unless it can be demonstrated that:
 - (1) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (2) the objective of the legislation can only be achieved by restricting competition.
2. Without limiting the scope of the review, the review is to:
 - (1) clarify the objectives of the legislation, their continuing appropriateness and whether the *Prostitution Regulation Act* remains appropriate for securing those objectives;
 - (2) identify the nature of the restrictive effects on competition;
 - (3) analyse the likely effect of any identified restriction on the economy generally;
 - (4) assess and balance the costs and benefits of the restrictions identified; and
 - (5) consider alternative means for achieving the same results, including non-legislative approaches.
3. When considering the matters referred to in clause 2 of these terms of reference, the review should also:
 - (1) Identify any issues of market failure which need to be, or are being addressed by the legislation;

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- (2) Consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* and the Northern Territory Competition Code.
4. The review is to also consider competition policy issues arising if certain proposals contemplated in the 1998 Five Year Report on the operation of the *Prostitution Regulation Act* were to be implemented. These are the proposals contained in the following recommendations:
- (a) There is no need to change the Act concerning sex workers. That is, there is no need for all sex workers to be registered. Nor is there a need to remove the requirement for certification of sex workers who use Escort Agencies;
 - (b) There is a need to tighten the rules governing the identification of sex workers at the time when they apply for a certificate;
 - (c) Certificates should be issued to sex workers rather than to the Escort Agency. Certificates should be issued by the Escort Agency Licensing Board rather than by the Commissioner of Police;
 - (d) Escort agents should not be entitled to advertise for sex worker employees;
 - (e) The role of the Escort Agents Licensing Board should be expanded so that it can take a more holistic approach to the administration of the *Prostitution Regulation Act*;
 - (f) There is a need to consider whether the *Prostitution Regulation Act* should be amended to protect the use of confidential information on appeal;
 - (g) There is a need to consider whether the Board should include a member who represents the sex industry;
 - (h) There is a need to consider whether there should be a requirement that records held by the Commissioner of Police and the Escort Agency Licensing Board only be used for the purposes of the administration of the Act and that the records be destroyed once they cease to be relevant to the administration of the Act.
5. The review shall consider and take account of relevant regulatory schemes in other Australian jurisdictions, and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions.

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6. The review shall consult with, and take submissions from those organisations currently involved with the sex industry, other Territory and Commonwealth Government organisations, other State and Territory regulatory and competition review authorities and affected members of the sex industry and their organisations².
7. This review shall not cover issues relating to the possible licensing of brothels. These issues have been subjects of a separate review.
8. The date by which the report is to be referred to the Minister³ is by 31 December 1999.

² See Part 4.2.

³ The Minister administering the *Prostitution Regulation Act* is the Minister for Industries and Business.

3. Background

3.1 *Competition Policy Agreements*

On 11 April 1995, the Northern Territory Government, along with the Commonwealth, State and Australian Capital Territory Governments agreed to a National Competition Policy and signed three specific agreements - namely:

- (i) the **Competition Principles Agreement** - this agreement, amongst other things, imposes on the Commonwealth, the six States and the two self-governing Territories an obligation to review and, if necessary, reform all legislation, which restricts competition. See clause 5(3). It also requires that proposals for new legislation also be subjected to such a review;
- (ii) the **Conduct Code Agreement** - this agreement creates various controls for the purpose of ensuring that, as a general rule, government businesses are subject to the same competition rules as privately owned businesses. Effectively, government agencies, corporations, professional bodies and natural persons shall be subject to Part IV of the *Trade Practices Act 1974* or its equivalent in place under State or Territory law⁴;
- (iii) the **Agreement to Implement the National Competition Policy and Related Reforms** - this provides a timetable for reform and for the making of payments by the Commonwealth to the States and the Territories in respect of appropriate progress in the making of the national competition reforms .

3.2 *National Competition Review - Guiding Principle*

Under clause 5(1) of the Competition Principles Agreement, the guiding principle is that:

"Legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
- (b) the objectives of the legislation can only be obtained by restricting competition".

⁴ *Competition Policy Reform (Northern Territory) Act 1996.*

3.3 *National Competition Policy - Review Process*

The review process under the Competition Principles Agreement involves:

- (i) clarification of the Legislature's objectives for the legislation;
- (ii) identification of restrictions on competition;
- (iii) ascertaining the effects of the restrictions;
- (iv) assessment of the costs and the benefit of the restrictions; and
- (v) consideration of alternative means for achieving the same result, including non-legislative approaches.

4. Review Process

4.1 *Reviewers*

In accordance with the national understanding concerning the conduct of such Competition Principles Agreement reviews, all persons involved must be able to provide independence of view. Accordingly, this review has been established by the Chief Executive Officer of the Northern Territory Attorney-General's Department who has performed the functions of a steering committee in respect of the review. The actual review has been conducted by representatives from the Northern Territory Attorney-General's Department, the Department of the Chief Minister, the Department of Lands, Planning and Environment and the Department of Industries and Business.

The members of the Review Team are:

- Robert Bradshaw - Northern Territory Attorney-General's Department
- Hugh Richardson, Department of Local Government
- Stephen Taaffe - Chief Minister's Department
- Tanya Jacobs - Department of Industries & Business
- Jim O'Neill, Department of Lands, Planning and Environment

The conduct of the review has been overseen by the Northern Territory Competition Policy Interdepartmental Steering Committee⁵.

4.2 *Discussion Paper and Consultation.*

There have been separate public review processes concerning the review of the operation of the *Prostitution Regulation Act*, and the proposals concerning brothels.

In light of this previous publicity the review team takes the view that there does not appear any practical requirement to engage in further public discussion for the solitary purpose of raising competition policy issues. Accordingly this paper is not to be released to the public, nor are public comments to be sought from either the public or the stakeholders.

Similarly, there is appears to be no benefit in consulting with interstate government agencies as required by term of reference number 6. These positions have been taken despite the terms of reference.

⁵ This is a committee established in 1998 by the Chief Minister's Department and which comprises representatives from the Chief Minister's Department, the Northern Treasury and the Northern Attorney-General's Department.

5. Prostitution Regulation Act

5.1 *Scope of the Prostitution Regulation Act*

The *Prostitution Regulation Act* legalises, to a limited extent, activities that were previously illegal. It permits certain persons to act as agents⁶ ("escort agents"). The role of these agents is to arrange for certain sex workers to provide sexual services to clients. The Act creates a licensing system in respect of the escort agents and a registration scheme for some sex workers. At the same time it:

- (a) prohibits these activities from taking place in brothels;
- (b) prohibits a sex worker working from her or his own premises; and
- (c) permits sex workers to otherwise operate without any form of regulation other than for the advertising controls referred to below.

The effect is to limit the persons who may work in the organised sex industry. These kinds of limitations do not apply to sex workers who deal directly with clients. Some restrictions apply to all members of the sex industry. For example, rules concerning advertising apply to all sex workers, regardless of whether or not they are operating through a licensed escort agent.

5.2 *Historical Overview*

The *Prostitution Regulation Act* was enacted in 1992 after much public debate. It reformed and consolidated the common law and statute law relating to prostitution.

The reforms arose out of the Reports of the Queensland Fitzgerald Royal Commission. That Report had revealed the problems in permitting a de facto regulation of the sex industry. Such 'regulation' arguably involved police protection of the members of the industry. In return police maintained control and were in a position to receive valuable 'intelligence' regarding other significant criminal activities.

These kinds of aims may be justifiable. However, the close involvement of police and the industry meant that individual police officers might become involved in crime. In respect of Queensland, the Fitzgerald Royal Commission found that this had occurred with very adverse effects on the Queensland Police Service and on the wider community.

⁶ The pejorative name for these agents is "pimps".

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Similar structural arrangements to those in Queensland relating to de facto management existed in the Northern Territory in the late 1980's. The Northern Territory Government responded by taking the view that, if nothing else, police involvement in the day to day regulation of the industry should, as far as possible, cease.

In making this decision the Government came to the view that it is not feasible to either outlaw prostitution or to outlaw all organised prostitution.

Accordingly the *Prostitution Regulation Act* legalises, in limited circumstances, persons living off the earnings of prostitutes. Additionally, it establishes a system of rules and prohibitions designed to outlaw bad practices and immoral activities. It also sets in place rules designed to minimise police involvement with the sex industry and to limit the exposure of the general public to the industry.

5.3 Processes in Place Under the Prostitution Regulation Act

The *Prostitution Regulation Act* and the Regulations under the Act provide:

- for a series of criminal offences concerning matters such as children engaging in prostitution;
- for the prohibition on the keeping of brothels;
- for the removal of many of the restrictions on a person being able to personally provide sexual services in return for payment. However, such services must be provided at the premises of the client (e.g. a hotel room) and must not be provided at the premises of the sex worker (as to do so would amount to brothel keeping);
- for the legalisation of the activities of escort agents - being persons who act as the agent for the sex worker in dealings with clients. However, such agents need a licence and are subject to regulatory controls in the Act, in the Regulations and in licences.

5.4 What is Prostitution?

Prostitution is defined by the *Prostitution Regulation Act* as the provision of sexual services by one person to another person in return for payment or reward.

5.5 When is Prostitution Legal in the Northern Territory?

Under the *Prostitution Regulation Act* the provision of prostitution services is lawful in the following three circumstances:

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- The operator and manager of an escort agency business are licensed, the person providing the sexual service is certified and the sexual service is not provided at a brothel;
- The sexual services are provided by an individual ("solo worker") working alone. These services cannot be provided at a brothel.
- The sexual services are provided in a hotel where the arrangement for the provision of the services is provided in some other part of the hotel.

5.6 Who can be Employed by an Escort Agent to Provide Prostitution Services?

The most common legal relationship in the Northern Territory sex industry, between an escort agent and a sex worker, is one of agency. The escort agent is paid by the sex worker to be the middle person who negotiates the sale and purchase of sexual services. The standard payment is either a set fee or percentage of the money paid by the client.

Notwithstanding the nature of this legal relationship the standard terminology within the industry is such that the agent is called the "employer" and the sex worker is the "employee". This industry terminology is used in this report notwithstanding that it may not be legally accurate for most relationships between agents and sex workers.

A person who has not been found guilty in the preceding 10 years of a disqualifying offence may be employed by an escort agent to provide prostitution services. In broad terms, a disqualifying offence⁷ is one that involves drugs or violence. An escort agent cannot employ a person unless, in respect of that person, the Commissioner of Police has issued an appropriate certificate on the basis that the person has not been guilty of a disqualifying offence. A certificate can be cancelled if a sex worker is subsequently found guilty of a disqualifying offence.

⁷ Section 9 of the *Prostitution Regulation Act* provides that the Commissioner of Police cannot issue a certificate in respect of a person if that person has in the previous 10 years been convicted of a violent offence (being an offence involving the use or threat of violence irrespective of the penalty that may be imposed) or convicted of a relevant drug offence (with such offences being breaches of sections 5, 6(1) or (2), 7, 8, 9 or 11 of the *Misuse of Drugs Act*).

An escort agency can only be lawfully operated by an adult resident of the Northern Territory (or a body corporate in some circumstances) who has not been found guilty of a disqualifying offence. In broad terms a disqualifying offence⁹ is an offence against various provisions of the *Prostitution Regulation Act*, a sexual offence, or an offence involving drugs or violence (including a threat of violence). The Act also requires that licensed operators and managers not have unlicensed partners.

The Escort Agency Licensing Board determines applications for a licence to operate or manage an escort agency. The Escort Agency Licensing Board meets with an applicant to discuss any problems revealed as a result of inquiries into the applicant, the requirements and obligations imposed by a licence, and issues such as safe sex practices and a safe working environment. Only applicants who are both eligible and suitable can be licensed.

If a licence is granted, the Escort Agency Licensing Board may impose conditions or restrictions on the licence. These may, for example, relate to the working conditions of sex workers, matters concerning their health and welfare, and matters concerning the health and welfare of the community generally.

In addition to these powers the Escort Agency Licensing Board may cancel or suspend a licence in specified circumstances. It may request that police investigate a complaint relating to the operation or management of an escort agency.

The licensing criteria seek to ensure that only appropriate persons operate escort agencies. Monitoring and certification provisions protect those within the industry that are prepared to operate in a lawful manner and promote good management and industry standards.

5.7 The Role of the Escort Agency Licensing Board

The Escort Agency Licensing Board is a body established by section 21(1) of the *Prostitution Regulation Act*. It consists of three members - a legal practitioner, a community health representative and a community welfare representative.

A Registrar is appointed by the Minister for Industries and Business to perform administrative functions to assist in the operation of the Escort Agency Licensing Board. The Registrar is also registrar for the Escort Agents Licensing Appeals Tribunal (see below, paragraph 5.8).

⁹ This is said noting that there is a different definition of disqualifying offence for licence applications than the one applicable to the issuing of certificates by the Commissioner of Police under section 9. Section 24 of the *Prostitution Regulation Act* provides for 2 types of disqualifying offences. In broad terms an applicant who has committed the offences of the kind set out in section 24(3) cannot be granted a licence. An applicant convicted of one of the disqualifying offences specified in section 24(4) cannot be granted a licence if the conviction took place within the previous 3 years. The section 24(3) offences include breaches of sections 9(4), 11, 12, 13, 14(1) or (2), 15(1) and 16 of the *Prostitution Regulation Act* and sections 127-132, 192 and 201 of the *Criminal Code*. The section 24(3) offences include offences against sections 5, 6(1) or (2), 7, 8, 9 or 11 of the *Misuse of Drugs Act*.

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The function of the Escort Agency Licensing Board is to hear and determine applications to be an escort agency operator or manager, to determine the conditions or restrictions to which licences are to be subject, to cancel and suspend licences in accordance with the Act, to request police to investigate complaints relating to the operation and management of an escort agency, and to liaise and consult with individuals and groups to assist the Escort Agency Licensing Board with carrying out its functions.

5.8 The Role of the Escort Agency Licensing Appeals Tribunal

A Magistrate constitutes the Escort Agency Licensing Appeals Tribunal (section 33(3) of the Act). This Tribunal hears and determines appeals:

- against licensing decisions of the Escort Agency Licensing Board
- concerning the certification decisions of the Commissioner of Police.

A decision of the Escort Agency Licensing Board to refuse to grant or renew a licence, or to cancel or impose a condition or restriction upon a licence may generally be appealed. On appeal, the Tribunal has a wide range of powers. It can affirm or vary a decision of the Escort Agency Licensing Board, or remit a decision together with a direction that the Escort Agency Licensing Board reconsiders the decision.

A decision of the Commissioner of Police to not issue a certificate to a sex worker who wishes to work in an escort agency can also be appealed. On appeal the Tribunal may, notwithstanding that the individual has committed an offence, find that there are adequate grounds for disregarding the offence.

5.9 The Monitoring of Persons Licensed or Certified under the Prostitution Regulation Act

Enforcement of the legislation is the responsibility of the Commissioner of Police. Information about the industry is sought and obtained from various sources. These sources include information from within the industry, information from informants, information gained during investigations carried out by members of the Police Service and information that is publicly available through newspapers etc.

Information concerning suspected breaches of the *Prostitution Regulation Act* is provided to the Criminal Investigation Branch. There have been a number of actions, investigations and prosecutions under the *Prostitution Regulation Act*. These vary from simple inquiries to detailed investigations.

In addition to these actions, the *Prostitution Regulation Act* empowers authorized police officers to enter and inspect an escort agency business to ensure that the provisions of the Act are being complied with, and to investigate a complaint to the Commissioner of Police (on a request by the Escort Agency Licensing Board).

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Notwithstanding that the Commissioner of Police is responsible for the enforcement of the legislation, the Escort Agency Licensing Board has become involved in some compliance activities. This has arisen because the Escort Agency Licensing Board is the Government organisation that maintains contact with the industry and which sets many of the basic rules (such as licence conditions). These basic rules govern the day to day operations of escort agencies. Accordingly, the Escort Agency Licensing Board, through employees of the relevant Government Department⁹, has participated in inspections.

⁹ From and including 4 August 1999, the responsible Department has been the Department of Industries and Business. Previously this responsibility rested with the Northern Territory Attorney-General's Department.

6. The Industry

6.1 *What do Solo Workers, Sex Workers and Escort Agents do?*

For the purposes of discussing the main groups subject to the operation of the *Prostitution Regulation Act* the following terms are used:

- solo workers;
- sex workers; and
- escort agents.

This classification and the use of these terms may not be acceptable to all members of the industry and the community. For example, many persons would say that solo workers and sex workers are members of the same occupation. Others might prefer the use of words such as "prostitute".

Solo workers

For the purposes of this document, solo workers are persons who provide sexual services after having dealt directly with clients in arranging for the provision of the sexual service. They must not provide such services in a brothel. However the *Prostitution Regulation Act* operates so that such services may be arranged in one part of a hotel and be provided in another part of the hotel.

Sex workers

For the purposes of this document, sex workers are persons who use an agent as the intermediary between themselves and the client. The structure of the *Prostitution Regulation Act* suggests that sex workers employ escort agents to provide such a service. However, in many ways, the relationship is more like one where the escort agent employs the sex worker to provide the sex services.

Escort agents

Escort agents are persons who, on behalf of sex workers, arrange with clients for the provision of the sex services. The extent of such arrangements varies. Some services may include placing advertisements in the paper, taking telephone inquiries and bookings and transporting the sex worker to and from the place where the sexual services are to be provided.

Additionally, there are other services that are mandated by the legislation or by instruments issued under the *Prostitution Regulation Act*. For example, licences require that the escort agent provide information to sex workers about safe sex.

COMPETITION POLICY REVIEW - REGULATION OF ESCORT AGENTS AND SEX WORKERS**6.2 The Market**

Restrictive legislative provisions do not operate in a vacuum. They are only worth worrying about, in terms of competition policy, if they affect a market.

In the case of the *Prostitution Regulation Act* the market appears to be those persons in the Northern Territory who require casual sex. Additionally, it has been suggested that an accessible sex industry is a desirable attribute of a locality that hosts tourists, business visitors and military forces.

One of the effects of the mutual recognition legislation is that licensing decisions taken in the Northern Territory may also be the main licensing decision for the whole of Australia and New Zealand. In a sense this means that the market extends outside of the Northern Territory. In the case of escort agents, there is some doubt as to whether they form an occupation within the meaning of that term in the *Mutual Recognition Act*. This issue is, however, of minor relevance for this review.

6.3 The Size of the Industry**6.3.1 Escort Agents and Certified Workers**

<i>Details as at May for each year of the operation of the Prostitution Regulation Act.</i>	<i>Current escort agents licences</i>	<i>Number of applications granted by the Commissioner of Police or by the Tribunal</i>
1992/1993	18	124
1993/1994	9	47
1994/1995	12	60
1995/1996	16	105
1996/1997	9	47
1997/1998	10	40
1998/1999	13	47

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The 1998 Report noted, in respect of the period 1992-1997, that:

"The difficulty in assessing these figures is that it is unknown as to how many of the 379 certificate holders are still in the sex industry and, if they are, whether they are still employed with escort agencies.

If the initial year of operation of the Act is excluded¹⁰, the conclusion can be drawn that the number of people entering the industry is relatively constant albeit within a fairly wide range. There is not a constant trend down in the number of certificates being issued".

These licensing statistics may be of limited use in assessing the impact of the *Prostitution Regulation Act* in terms of competition policy. The Review Team has read them as indicating that the legislation has led to a reduction from 1992 in the number of businesses involved in the industry. The numbers since 1992 have been relatively stable. However, the Review Team also reads them as an indication that more individuals can now work without the need to employ an escort operator as an intermediary.

¹⁰ This year should be excluded because it was the year in which all sex workers then working with agencies were required to obtain a certificate.

7. Anti-Competitive Provisions in the Prostitution Regulation Act

7.1 *Competition Principles Agreement*

The Competition Principles Agreement sets out the general principle that legislation needs to be reviewed if it is anti-competitive. However, views differ as to what legislative provisions are anti-competitive.

In this Discussion Paper the Review Team has adopted the interpretation given by the National Competition Council. The Council has identified that legislation may limit competition if it:

1. Governs the entry or exit of firms or individuals into or out of markets;
2. Controls prices or production levels;
3. Restricts the quality, level or location of goods and services available;
4. Restricts advertising and promotional opportunities
5. Restricts price of type of input used in the production process;
6. Is likely to confer significant costs on business; or
7. Provides advantages to some firms over others by, for example, shielding some activities from pressures of competition.

7.2 *Anti-Competitive Provisions of the Prostitution Regulation Act*

The following table¹¹ contains a description of the major restrictions in the *Prostitution Regulation Act*. The table also contains references to the proposals referred to in paragraph 4 of the terms of reference. The Act and Regulations contain other restrictions. However, these are subsidiary to the restrictions that are discussed in the table.

Description of the Restriction	Competition or Economic Effects	Severity of the Restriction	Any other Problems or Comments
S.4 makes it an offence to keep or manage a brothel – penalty \$20,000. S.5 makes it an	Governs the entry or exit of firms or individuals into or out of markets. Restricts the quality, level or location of	This is a major restriction.	The decision to maintain the illegality of brothels was a political decision.

¹¹ The table is set out in a form recommended by the Northern Territory National Competition Policy Steering Committee.

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<p>offence to allow premises to be used as a brothel - penalty \$20,000</p>	<p>goods and services available. Restricts price of type of input used in the production process. Is likely to confer significant costs on business. Provides advantages to some firms over others by, for example, shielding some activities from the pressures of competition.</p>		
<p>S.6 makes it an offence to carry on the business of an escort agent unless the operator and managers of the business are licensed under the <i>Prostitution Regulation Act</i>.</p>	<p>Governs the entry or exit of firms or individuals into or out of markets. Is likely to confer significant costs on business.</p>	Major	
<p>S.7 makes it an offence for licensed persons to carry on the business in conjunction with unlicensed persons.</p>	<p>Governs the entry or exit of firms or individuals into or out of markets. Is likely to confer significant costs on business.</p>		
<p>S.8 makes it an offence to breach the terms of a licence – penalty \$10,000</p>	<p>Is likely to confer significant costs on business.</p>	Potentially major.	<p>The power to impose restrictions is very broad. Conditions can be made which go to the operation of the business.</p>
<p>S.9. obliges a person who wants to be a sex worker and to operate through an escort agent to be the subject of a clear</p>	<p>Governs the entry or exit of firms or individuals into or out of markets. Is likely to confer significant costs on</p>	Major. Imposes additional costs and restrictions on persons who wish to operate through an agent	<p>The obligations to obtain the certificate are imposed on the escort agent rather than the worker. This is in keeping with the</p>

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<p>certification from the Commissioner of Police. Such a certification will only be given if the sex worker has not been found guilty of various offences (of violence and drugs).</p>	<p>business. Provides advantages to some firms over others by, for example, shielding some activities from the pressures of competition.</p>	<p>rather than solo.</p> <p>Section 9(6), 9(7) and 9(8) are minor restrictions on competition because they impose costs on business by the mere fact that the operator has to spend the time (opportunity cost) and incur expense to advise Police in writing of when a sex worker is no longer in their employ, when the operator's business is ceasing and/or when employing a sex worker.</p> <p>Section 9(9) - this section is restrictive in that a solo sex worker can still work even if they have been convicted of a violence/drug related offence, yet the sex worker who is employed through an escort agency and has his/her certificate cancelled/revoked for an appropriate offence conviction then has their right taken away</p>	<p>objective of keeping sex workers separate from the police. The restriction is on the operator and the sex worker, but more on the escort agent as they cannot employ (in a sense) a sex worker, unless they are certified. Whereas, a sex worker doesn't have to be certified to operate their own business (solo worker).</p> <p>It could also be said to be providing advantage to the sole worker over the escort agent, or those who wish to work through an escort agent, e.g. sole workers aren't restricted as they are not required to be certified under this Act?</p> <p>Arguably, this system lacks fairness and equity - they are all doing the same activity in the same industry and therefore, should they all be required to be certified, or all not certified?</p>
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		from that as to how they choose to provide their services. For example, they are unable to choose whether they will be someone's employee or act as a free agent (solo). This is restrictive in that it disallows free entry into the market by a sex worker who would prefer to act through an agent, yet cannot due to being convicted of offences that solo workers are not, in a sense, penalised for.	
Sections 10-18, 20 create various offences concerning soliciting, accosting or loitering for the purposes of prostitution, forcing an adult to become or remain a sex worker, involving persons aged under 18 in prostitution, use of medical examination results	Not applicable	Not applicable	These are all issues of morality, rather than issues concerning competition.
S. 19 makes it an offence to advertise in breach of requirements in the Regulations, to advertise by broadcast or television, or to induce (by publication) a	Restricts advertising and promotional opportunities. Is likely to confer significant costs on business. Provides advantages to some firms over others by,	Major. Industry argues that these restrictions stop them from operating like any other business.	

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person to seek employment.	for example, shielding some activities from the pressures of competition.		
S.24. This contains various requirements as to who can hold a licence or participate in the ownership of an escort business. Such persons must be over 18, must be resident in the Northern Territory, must not have been guilty of various offences and must not be involved with a person who has been found guilty of various offences. There are also restrictions on whom can own or control a body corporate that has an escort agent's licence.	Governs the entry or exit of firms or individuals into or out of markets. Is likely to confer significant costs on business.		
S 25-28 provides for various licensing requirements - for example, a licensing fee, a requirement for a police clearance. The fees are contained in Regulation 5 - they are \$1000 per year for a body corporate and \$400 for an individual. Additionally fees, ranging from \$80-\$100 are paid for each agency name.	Is likely to confer significant costs on business.		
S. 29 provides that licences can be subject to conditions and restrictions.	Is likely to confer significant costs on business.		The Board is under no obligation that conditions be the same for all licences. This means

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	Provides advantages to some firms over others by, for example, shielding some activities from pressures of competition.		that there is a potentiality that some licensees will be subjected to more stringent and costly restrictions than others.
S.30 provides that licences run for one year	Is likely to confer significant costs on business.		Other jurisdictions, e.g. Victoria, licences run for 3 years.
S.45 imposes an obligation on licensees to provide details of changes.	Is likely to confer significant costs on business.	Minor impact.	
Regulation 4. Contains prescription requirements concerning advertisements in newspapers. For example, advertisements must not contain a photograph other from the neck up, must not refer to age, physical attributes, race, colour or ethnic origin, must not use the word "massage" other than in conjunction with the word "erotic" and must not be larger than 3.5 cm X 4.5cm.	Restricts advertising and promotional opportunities.		
Suggestion that 'solo' sex workers be required to be registered.	Governs the entry or exit of firms or individuals into or out of markets. Restricts the quality, level or location of goods and services available. Is likely to confer significant costs on business.	This would have a major impact.	This suggestion is often made for the purpose of removing the apparent disadvantage faced by escort agents. That is, they can only employ, for the purpose of the provision of sexual services, sex workers for whom there is a certificate. In contrast

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			sex workers can provide the same service without any requirement to obtain a certificate. However, the issue is resolved having regard to the main objective of the legislation - which is that of regulating organised prostitution. It must, however, be said that there are no objectives listed in the legislation with the consequence that it is difficult to measure performance.
Improving the identification of sex workers for the purpose of issuing certificates.	Is likely to confer significant costs on business.	Minor. Adequate process for identifying persons is a standard part of any licensing or registration system.	
Certificates should be issued to sex workers rather than to escort agents.	Nil impact.		If this provision were to be implemented it would not affect the licensing requirements concerning escort agents and the managers of escort agencies.
Expansion of the role of the Escort Agents Licensing Board.	Nil impact.		This relates to the rationalisation of regulatory processes.
Protection of use of confidential information on appeals	Nil impact.		
Whether the Board should include a member from the sex industry.	Nil significant impact on competition.		The small size of the organised sex industry in the Northern Territory might make it difficult to obtain a member from the industry who is a person sufficiently

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			independent of the various members of the industry.
Retention of records.	Nil significant impact on competition.		

In general terms, many of the restrictions on escort agents and sex workers are the usual kinds of restrictions that form a standard licensing system. For example, the requirement to go through licensing issue and renewal processes involving police checks and possible proceedings before a licensing authority.

Notwithstanding that the licensing system may be justifiable in terms of clause 5¹² of the Competition Principles Agreement it may be that some improvements could be made so as to reduce the anti-competitive impact of the licensing controls whilst retaining the effectiveness of the licensing scheme.

It can be noted that many of the restrictions simply limit activities that might otherwise be illegal or constitute a social nuisance. For example, the type of advertising has contents that may constitute a social nuisance.

¹² See summarised in item 1 of the terms of reference (part 1) and also part 3.1(i) and part 12.1.

8. Objectives of the Prostitution Regulation Act

8.1 *Objectives at the Time of Enactment*

The objectives of the Act are not set out in the Act. However, the issue of what are the objectives of the *Prostitution Regulation Act* was examined in the 1998 Report¹³ on the Act. That report found as follows:

- *The fact that organised prostitution has often been associated with organised crime. This means that there is a need to have measures, which seek to break the possible connections between organised crime and organised prostitution.*
- *The fact that the community has adopted moral positions on various aspects of prostitution. This means that the Act contains provisions, which prohibit streetwalking, prohibit brothels, prohibit child prostitution, prohibit exploitation and prohibit agents advertising prospects of employment in prostitution.*

At the time of the introduction of the Bill for the Act in 1991 the more specific objectives of the proposed legislation were identified as follows:

- *To outlaw the then informal arrangements between the Police and members of the prostitution industry and replace them so that members of the Police Service have a regularised and prescribed role in the regulation of the industry.*
- *The making of a concerted effort to head off any potential infiltration of the industry by organised crime.*
- *The reduction of exploitation within the industry, particularly with respect to children.*

The Act seeks to formalise relations between police and escort agency operators. This follows the advice of Robert Mulholland to the Northern Territory Government in 'Advice: Northern Territory Investigations: 1991' ("the Mulholland Inquiry") which criticised the informal monitoring of sex workers by police prior to the commencement of the Act. Under this informal system, sex workers were encouraged to provide information to police in return for police clearance to work as a sex worker.

¹³ Five Year Report as required by section 52(3) of the *Prostitution Regulation Act*, tabled in the Legislative Assembly on 23 April 1998 by the Hon Shane L Stone MLA, Attorney-General for the Northern Territory.

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The Act focuses on escort agencies, rather than sex workers, for monitoring by the police. As a consequence, the Act regulates operators and managers of escort agencies, rather than sex workers. Sex workers are only regulated if they wish to use the services of an escort agency. The role of the escort agent is to arrange, on behalf of the sex worker, for the provision of sexual services by the sex worker to the client.

An underlying premise of the Act is that prostitution should not be encouraged. In line with this premise is the view that lawful prostitution and associated activities should only be part of the lives of people who are part of the industry or who want to use the services provided by the industry. As a consequence the Act prohibits brothels, prohibits escort agencies from advertising employment vacancies, contains severe penalties for forcing a person to become or remain a sex worker and tightly regulates advertisements relating to the provision of sexual services."

8.2 Current Northern Territory Objectives for the Prostitution Regulation Act

Additional to the objectives for the initial Territory legislation as referred to in part 8.1, there are other potential objectives, identified in other jurisdictions, in the regulation of prostitution. These include the elimination of 'immorality', the improvement of working conditions for sex workers and/or the protection of the health of sex workers and their clients.

The 1998 Report referred to in part 8.1 was tabled and debated in the Legislative Assembly. There was no criticism of the objectives identified for the legislation.

Accordingly, the objectives outlined in the 1998 Northern Territory report are taken for the purpose of this report to be the actual objectives.

In summary they are to limit the adverse moral problems with organised prostitution and the criminal associations with prostitution by:

- Outlawing informal arrangements between the Police and members of the prostitution industry and replacing them so that members of the Police Service have a regularised and prescribed role in the regulation of the industry.
- The making of a concerted effort to head off any potential infiltration of the industry by organised crime.
- The reduction of exploitation within the industry, particularly with respect to children.
- Minimisation of the impact of legalised prostitution on those sectors of society whose members wish to remain isolated from prostitution activities.

9. Benefits of the Restrictive Provisions of the Prostitution Regulation Act

The main clear benefits of the restrictive provisions are:

- That they provide a mechanism for keeping persons with known criminal records out of the organised sex industry;
- That they provide avenues to be followed for removing from the organised sex industry licensed persons who have become known as being criminal - for example, by being convicted of certain offences;
- That they limit the extent of the nuisance that the community sees with these occupations;

However, most of these benefits are not practically quantifiable - especially given that the underlying purpose of the legislation is grounded in community views relating to the morality of bought sex. Most of the benefits are "negative" in the sense of minimising the sexual exploitation of children, minimising police corruption of the kind identified by Fitzgerald and limiting nuisance.

10. Costs of the Restrictive Provisions of the Prostitution Regulation Act

The costs are of two kinds. They are:

- The costs to the members of the occupations in complying with the legislation;
- The net¹⁴ costs to Government in maintaining the Escort Agents Licensing Board, funding the Police in their search of criminal records and in the funding of the general administration of the legislation.

These costs may be quantified from the point of view of Government. However, for the purpose of this review there is little to be gained from conducting the necessary research, calculations and analysis. The reason being that there is no basis for comparing such costs with the value of the benefit.

However, it can be noted that the costs to government are far greater than the revenue earned by way of licensing fees. In terms of competition policy and the objectives for this legislation there is no particular reason why the licensed members of the industry should be responsible for all of the regulatory costs to government.

¹⁴ With the net costs for Government being the total costs minus licensing income.

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11. Other National Competition Principles Reviews of Law relating to Prostitution

11.1 National Competition Policy Reviews

The Competition Policy Agreement obligates States and Territories to identify anti-competitive legislative provisions and to then conduct a review. The proposed reviews elsewhere in Australia for the purposes of the Competition Policy Agreement and the summary status of them are as set out in the following table:

State/Territory	Legislation	Description of the Review	Current Position with the Review
NSW	<i>Disorderly Houses Act 1943.</i>	Not subject to the review.	Not applicable.
Victoria	<i>Prostitution Control Act 1994.</i>	Not subject to the review.	This Act had been identified for review. However, it has been removed from the NCC process on the basis that "there is no scope for change due to overriding social policy objectives".
Queensland	Criminal Code 1899.	Not subject to review. However, other reviews are occurring.	Major changes announced.
WA	No relevant licensing legislation.	Not subject to review. However, other reviews are occurring.	Bill being developed.
SA	No relevant licensing legislation.	Not subject to review. However, other reviews are occurring.	Bills introduced for discussion.
Tasmania	No relevant licensing legislation.	Not subject to review. However, other reviews are occurring.	Policy decision was due by the end of 1999. No decision appears to have been made (as at March 2000).

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ACT	<i>Prostitution Act 1992</i>	There is to be a full public review	It appears that the review will occur in 2000. It is to be conducted by the Department of Justices and Community Services
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There is no available evidence of the outcome of any competition policy assessments. The position adopted by the Victorian Government is probably symptomatic. The Victorian legislation was initially identified as being in need of review. However, it was taken out of the review process on the basis that any review would not, despite any possible findings, affect the legislation given the "overriding social issues"¹⁵

Additionally, officials of the National Competition Council indicated to Northern Territory officials that prostitution was not within the field of interest of the National Competition Council.¹⁶

¹⁵ See quoted in the NCC 1998 Compendium of legislation reviews.

¹⁶ Meeting, Darwin 21 June 1999.

12. Assessment of the Consequences on the Restrictions on Competition

12.1 Public Benefit Test

The public benefit test identifies the nature and incidence of the costs and benefits to the community of restricting competition. If the net effects from deregulation are negative, there is a net public benefit from retaining the existing arrangements.

12.2 Clause 1(3) of the Competition Principles Agreement

Clause 1(3) of the Competition Principles Agreement provides as follows:

"Without limiting the matters that may be taken into account, where this Agreement calls:

- (a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or*
- (b) for the merits or appropriateness of a particular policy or course of action to be determined; or*
- (c) for an assessment of the most effective means of achieving a policy objective;*

the following matters shall, where relevant, be taken into account:

- (d) government legislation and policies relating to ecologically sustainable development;*
- (e) social welfare and equity consideration, including community service obligations;*
- (f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;*
- (g) economic and regional development, including employment and investment growth;*
- (h) the interest of consumers generally or of a class of consumers;*
- (i) the competitiveness of Australian businesses; and*
- (j) the efficient allocation of resources".*

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Clause 1(3) permits competition policy reviews to take account of broad government policy. None of the listed paragraphs in clause 1(3) specifically deal with morality or rights. However, the gist of the listed paragraphs is such as to suggest that overall government policy is of relevance in competition policy assessments.

Additionally, clause 1(3)(e) might be thought to have specific relevance. This provides that "social welfare and equity consideration" needs to be taken into account. In this case broad social imperatives stand behind the legislation. They are based on the formal morality views said to be held by the community. They are of much greater significance in assessing whether the legislation is meeting its objectives than the usual reasons for occupational regulation.

Those reasons include consumer protection (in respect of the quality of services) and the health and safety issues. The latter are of some relevance - particularly for the health and safety of the workers in, and clients of, prostitutes.

12.3 Assessment

12.3.1 Legalising the Operations of Escort Agents and Sex Workers – General Observations

The main current objective of the Act is that of reducing the possibilities of organised crime being responsible for organised prostitution.

Certification of sex workers plays a part in achieving this aim by ensuring that the only people who can work for an agent are those people for whom there is a reasonable assurance that they are not likely to commit crimes of violence or to be involved with the use or supply of drugs. This restriction on escort agency sex workers appears to be anti-competitive because it has the effect that a person who wishes to work with an agency is subjected to additional regulatory burdens. Also the escort agent looks to be under an additional burden because he or she can only provide services through a worker after that worker has been the subject of a favourable police certificate; whereas that same worker could immediately commence work on his or her own behalf.

However, these apparent restrictions are explainable in terms of the objectives of the Act - these objectives relate, in the main, to reducing the possibility of exploitation. They do not relate to control of the whole of the prostitution industry. Thus:

- (a) the provisions in the Act regulate escort agents - basically they are not permitted to employ persons who appear to be exploitable; and
- (b) the provisions in the Act do not regulate solo workers for the simple reason that such regulation would serve no purpose.

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Arguments in favour of regulating solo workers are really arguments in favour of changing the objectives of the Act. Changing those objectives is outside the scope of a competition policy review.

However, it might be argued that the imposition of the certification requirement is:

- (a) not the best method of ensuring that vulnerable workers do not work for escort agents; or
- (b) ineffective in preventing exploitation.

12.3.2 *Licensing as a Regulatory Option*

Licensing provides a mechanism for making it easier to keep known criminals out of the industry. It is not the complete answer. There is still a need to enforce the law so as to make sure that unlicensed persons are not operating as part of the organised sex industry, either outside of the licensing system or under cover of a licence issued to some other person.

The licensing process also provides the opportunity for ensuring that licensed operators are aware of the health and safety issues.

Licensing makes it a lot easier for enforcement of the law. For example, administrative officers, rather than the Police, can monitor the activities of licensed persons without the need for access to confidential police intelligence. Members of the Police Service can focus on activities that appear to be being conducted by unlicensed persons.

It can be argued that the best judges of escort agents are the sex workers. In an environment where there is freedom to legally work as a sex worker it may well be the case that sex workers will only use the services of those agents who attend to the needs of the workers. Thus the system may well be able to self regulate. Police and enforcement resources could focus on problems/complaints rather than spend time on extensive administrative activity in checking criminal records as part of the licensing issue and renewal processes.

This view is probably valid in respect of a large segment of the sex industry. However, it appears, for the purpose of limiting the fringe involvement of disreputable persons, that overt controls through the discipline of a licensing process are needed. However, it also appears that the licensing period of one year (for escort agents) is too short. A three year licensing period would achieve the same objectives as a one year period and save considerable government and industry resources. Such a three year period exists in Victoria. Any extension of the base licensing period has no anti-competitive impact.

COMPETITION POLICY REVIEW - REGULATION OF ESCORT AGENTS AND SEX WORKERS*12.3.3 Advertising*

Advertising is regulated because it is considered to be an undesirable activity. That is, the content ("sex for sale") and the aims ("fostering the use of prostitutes") are offensive to some sensitive members of the community.

Thus advertising is not regulated for the purpose of limiting competition between this sector and other sectors or to limit competition between escort operators and solo workers. The kind of advertising involved in selling sex services or in recruiting persons to become involved in prostitution is considered to constitute a nuisance. Limiting advertising in respect of services provided and in respect of seeking workers lessens the impact of prostitution on the community.

It may, however, be appropriate to require, as in Victoria, that persons seeking to place such advertisements be required to provide an appropriate identifying number. This might make it easier for compliance and enforcement officers to work out who are the persons placing the advertisements: -that is, to identify if they are licensed or not.

The issue is whether the Act should permit escort agencies to advertise positions vacant in prescribed circumstances. For example, should the restrictions on advertising prostitution services be amended to permit the words "Position Vacant" in a discreet manner when a vacancy exists? This is said, noting that the current prohibition is avoided by the use of code language in the adult entertainment pages. The current industry jargon is "ladies welcome".

In addition, it is argued that advertisements for vacancies could be regulated so that the advertisements are discreet.

There are disadvantages in permitting advertisements for employees. One is that advertising of employment vacancies will encourage persons to provide prostitution services. In particular this encouragement may work with young persons who are in a vulnerable situation and who might not otherwise enter the sex industry. A second is that advertising of employment vacancies is contrary to the policy of the Act, which is to the effect that prostitution should not be encouraged.

Members¹⁷ of industry see this prohibition on advertising for sex workers as being an indication that the community does not yet accept the validity of the business that they are conducting. However, the purpose of the Act is to control organised prostitution as distinct from promoting prostitution.

¹⁷ And some independent commentators - eg. the former Anti-Discrimination Commissioner (NT).

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Consideration could be given to placing greater legal¹⁸ responsibility on to newspapers for the legality of the advertisements that are run. In essence there could be an offence for newspaper proprietors to publish a newspaper containing an advertisement or article that is in breach of the regulations. Such regulatory controls appear to be within the general objectives sought to be achieved by the legislation.

Whilst this paper has raised these issues concerning advertising, it is not within the scope of this paper to come to any conclusion as to whether such increased controls are justifiable in terms of competition policy. That issue should be resolved if and when the Government decides to further regulate advertising. At this time there is no such proposal or recommendation that it occurs.

However, imposing additional controls on advertising is potentially anti-competitive. Any firm proposal would need to be the subject of a competition policy review that would, if nothing else, require consultation with the publishers of newspapers.

¹⁸ The provisions of section 19 of the Act (deals with advertising offences) appear to identify the person causing an advertisement as the person who is caught by the operation of the section.

13. Trade Practices Act 1974

13.1 *Relevance of the Trade Practices Act 1974*

The review is also required to consider whether any of the provisions of the *Prostitution Regulation Act* or the other proposals might breach the *Trade Practices Act 1974* (Commonwealth) or the Northern Territory Competition Code.¹⁹

Part IV of the *Trade Practices Act* prohibits a corporation and, in the Northern Territory, individuals from engaging in certain anti-competitive practices. The Competition Code is in substantially the same terms as Part IV of the *Trade Practices Act*.

Part IV of the *Trade Practices Act* includes the following provisions:

- Section 45 - prohibits the enforcement of exclusionary provisions, whether or not they are anti-competitive, and arrangements which have the effect of substantially lessening competition.
- Section 45A - which deems horizontal price fixing to be anti-competitive, subject to some exemptions.
- Section 45B - which proscribes covenants which have the effect of substantially lessening competition.

13.2 *Potential Breaches of the Trade Practices Act 1974*

There is nothing in the proposals that authorise a breach of the *Trade Practices Act* or the Competition Code.

¹⁹ As described in the *Competition Policy Reform (Northern Territory) Act*.

14. Conclusion

On balance it appears that:

- (a) there is sufficient need for mechanisms to ensure that persons who act as agents in any of these fields are:
 - (i) not known criminals; and
 - (ii) able to be removed from the industry if they are shown to be criminal or to have failed to comply with behavioural requirements set out in the licensing conditions;
- (b) there are no competition issues concerning limitations on activities, such as advertising, where the limitation exists because of a formal morality position held by the community; and
- (c) there are no competition issues, in terms of the objectives of the *Prostitution Regulation Act*, arising from the fact that there is no licensing or registration system concerning solo sex workers.

15. Assessment of Alternatives

15.1 *Other Regulatory Options*

Even if regulatory restrictions in the *Prostitution Regulation Act* can be justified in the public interest as producing a net public benefit, they must still be removed if the policy objectives of the *Prostitution Regulation Act* could be achieved by other means.

There are a number of regulatory options or other approaches that could be used for the purposes of achieving the objectives of the *Prostitution Regulation Act*. These are set out in Appendix 2²⁰.

15.2 *Analysis of the Alternative Regulatory Options*

Of the various regulatory options described in Appendix 2, none are clearly suited to the regulation of escort agents and sex workers.

The main alternate option comprises elements from a number of the other regulatory options. It can be described as a notification system - being a modification of the current licensing scheme. This would provide an enforcement agency with the power to ban industry participants who breach legislative rules. It would be dependent on:

- there being clear rules;
- there being strong education and awareness concerning those rules;
- there being a high level of active enforcement.

Another option is that of town planning controls. This is an option used elsewhere for the control of prostitution. However, town planning controls are largely an irrelevancy to the legalised sex industry in the form in which it currently exists in the Northern Territory. This is because the sexual activity takes place at the client's premises. Planning controls would only come to be of relevance if brothels were to become lawful.

The main issue is whether the current licensing scheme which forces persons involved in the legalised organised sex industry to obtain government approval is more effective in achieving the Act's objectives than the indirect regulatory proposals set out in this or the options set out in Part 15.

²⁰ These are as adapted by the Committee and the Northern Territory Department of Industries and Business from the Victorian Office of Regulation Reform paper titled "*Regulatory Alternatives*".

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Assuming that the Government's focus is on minimising possibilities of exploitation, there is no other appropriate mechanism for this minimisation. Other regulatory mechanisms tend to focus on moving resources from the regulatory processes (e.g. the checking of criminal histories) to Police Services' enforcement activity - that is, investigation to see whether, in fact, exploitation is occurring.

One of the critical issues is that of minimising informal arrangements with police and the influence of criminals in the industry. It appears that the strict licensing requirement does have this effect. Negative licensing and/or notification would be difficult to apply because this is an industry that works undercover. It would be virtually impossible for an ordinary non-police enforcement agency to maintain sufficient control of the industry unless the industry is forced to provide information, access and contact via a licensing system. However, the advantage of negative licensing is that it permits Government to focus resources on enforcement and monitoring of problems in the industry. Some people might say that this is a more useful activity than the paper shuffling activities - which may only in fact regulate those persons who are willing to participate in a licensing scheme.

Diffusing regulatory controls would, in one sense, be a return to the pre-1992 situation where controls were in the form of prohibitions contained in legislation. Such legislation was ineffective for:

- Outlawing informal arrangements between the Police and members of the prostitution industry;
- Dealing with the potential infiltration of the industry by organised crime;
- Elimination of exploitation within the industry, particularly with respect to children;
- Minimisation of the impact of legalised prostitution on those sectors of society whose members wish to remain isolated from prostitution activities.

The other issue often raised is that of equity or fairness in relation to the rules concerning solo sex workers versus escort agents (and their sex workers). For example, if the agent is being checked to see if they are, have been or are somehow associated with organised crime, then why do the agent-based workers need to be checked (especially when solo workers are not so required?) It is arguable that it should be up to the agent as to what requirements they place on the selection of staff, just as any normal employer does.

However, as noted earlier in this paper, this argument ignores the objective of the Act - which is that of preventing exploitation. The current provisions are pro-active rather than re-active. They put in place a barrier between those workers who may be subject to exploitation and those who may potentially conduct that exploitation.

15.3 *Industry Representation on the Licensing Authority*

In the past, industry has sought that it be represented on the Escort Agents Licensing Board.

The industry is comprised of diverse groups, which have differing, sometimes competing, priorities. To have industry representation on the Escort Agents Licensing Board would, potentially, set up an anti-competitive situation, to the extent that such a person would have influence in the Escort Agents Licensing Board's decision-making. An industry representative could also have substantial control over the composition of the market, and the number and type of competition with whom they would have to compete. In addition, industry representation would provide advantages to the sector of the industry to which the representative belongs.

Additionally, the industry probably does not either enough members or members who could be taken to represent, over a reasonable length of time, the general interests of the industry.

16. Appendix 1 - Other Reviews and Proposals Concerning Prostitutes and Escort Agents

16.1 *1991 Queensland Criminal Justice Commission - "Regulating Morality - A Review of Prostitution Laws in Queensland"*

This Report contained the following recommendations:

1. The need of a regulatory framework to govern prostitution involving 2 to 10 people.
2. That single sex workers working from their own home continue to be allowed to do so.
3. That various criminal offences continue to apply to certain prostitution activities (e.g. regarding children aged under 18, disadvantaged groups, fraud and intimidation of people to influence them to become prostitutes and street prostitution).

These recommendations were not supported by the Government. Instead a law was enacted which had the objective of stronger enforcement. However, there was no criminalisation of the activities of single sex workers in conducting prostitution on their own premises.

In June 1999 the Queensland Government announced that there would be a major overhaul in 2000 of the laws relating to prostitution. The Queensland Premier has been quoted as saying that the legislation would permit "boutique brothels" with controls on the numbers of sex workers. Some possible elements of the scheme are²¹:

- co-operative brothels where women could work together for support, fully regulated, with health checks and no alcohol on the premises;
- brothels would not operate near school, churches or residences;
- these small co-operative-type brothels will be located in industrial area and there will be strict limitations on the number of rooms and the size;
- no one convicted of a crime that carries a jail term of two years or more would be allowed to operate; and
- operators would only be allowed to have one establishment

²¹ NT News, 21 June 1999.

16.2 1998 Northern Territory Review

Section 53(2) of the *Prostitution Regulation Act* requires that the Attorney-General table in the Legislative Assembly a report on the operation of the provisions of the Act relating to escort agency businesses in the five year period following the commencement on 8 May 1992 of the Act. That report was tabled in April 1998 and contained the following recommendations:

1. The 3 objectives set in respect of the regulation of prostitution in the Northern Territory have been achieved – namely, informal links between the Police and individual sex workers have been eliminated; there is no evidence of any infiltration of the sex industry by organised crime; and there is no evidence of widespread exploitation within the sex industry.
2. Brothels should be legalised in specified circumstances with the Victorian legislation being an appropriate model.
3. There is no need to change the Act concerning sex workers. That is, there is no need for all sex workers to be registered. Nor is there a need to remove the requirement for certification of sex workers who use Escort Agencies.
4. There is a need to tighten the rules governing the identification of sex workers at the time when they apply for a certificate.
5. Certificates should be issued to sex workers rather than to the Escort Agency. Certificates should be issued by the Escort Agency Licensing Board rather than by the Commissioner of Police.
6. Certificates for sex workers should not be issued on an interim basis to cover the period between making an application and the finalisation of consideration of the application.
7. There is no real need to transfer the appeal functions concerning sex worker's certificates from the Appeals Tribunal to the Board.
8. Escort agents should not be entitled to advertise for sex worker employees.
9. The role of the Escort Agents Licensing Board should be expanded so that it can take a more holistic approach to the administration of the Act.
10. There is a need to consider whether the Act should be amended to protect the use of confidential information on appeal.
11. There is a need to consider whether the Board should include a member who represents the sex industry.
12. There is a need to consider whether there should be a requirement that records held by the Commissioner of Police and the Escort Agency Licensing Board are only used for the purposes of the administration of the Act and that the records be destroyed once they cease to be relevant to the administration of the Act.

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16.3 1990's New Victorian Legislation

Under the *Prostitution Regulation Act 1986*, as implemented, planning authorities were responsible for granting permits. The permits were based on a mixture of land use and character considerations. By 1994 most prostitution services were being provided by escort agents. The *Prostitution Control Act 1994* introduced a licensing authority for brothels and escort agents.

16.4 South Australia

During October 1999 the South Australian Government introduced 4 Bills which describe various options for the regulation of prostitution. The members of the South Australian Parliament are to exercise a conscience vote on the options contained in the Bills. The Government has stated that it has no view²².

Prostitution (Licensing) Bill 1999

This proposes the establishment of the Commercial Sex Licensing Board, which will licence persons to carry on sex businesses. This licence will apply to brothels and agents. The Bill proposes prescriptive town planning rules relating to brothels. Under Bills associated with this Bill prostitutes would have the status of employees for the purposes of legislation such as the *Industrial and Employee Relations Act 1994* and the *Workers Rehabilitation and Compensation Act 1986*. Prescribed planning rules will apply - including a prohibition on a specific brothel if, with other brothels, it may tend to establish a red light area. Occupiers of nearby premises would also have the right to go to the Magistrates Court seeking a nuisance order against the operator of a brothel business. There would be no third party rights of appeal against planning decisions concerning land use for prostitution purposes.

Prostitution (Registration Bill) 1999.

This Bill would provide that it is only lawful to operate, participate in or use the services of prostitution business if both the business and its operator are licensed. The other general amendments referred to in the discussion of the Prostitution (Licensing) Bill 1999 would also apply.

Prostitution (Regulation) Bill 1999.

This would provide that it is lawful for an adult person who has not been convicted of a prescribed offence to operate or participate in a prostitution business. The other general amendments referred to in the discussion of the Prostitution (Licensing) Bill 1999 would also apply.

²² See South Australian Hansard, 21 October 1999 (Assembly).

Summary Offences (Prostitution) Amendment Bill (together with the Criminal Law Consolidation (Sexual Servitude) Amendment Bill 1999)

These Bills would retain the illegality of prostitution but would make the illegality more easily enforceable.

16.5 Western Australia

The Prostitution Bill 1999 was introduced into the WA Legislative Council on 25 November 1999. The main features of this Bill include:

- (a) definition of "prostitution" related to physical stimulation by way of contact;
- (b) prohibition on street prostitution;
- (c) prohibition on a person involved in the prostitution business knowingly permitting a person with a sexually transmitted disease to act as a sex worker;
- (d) prohibition on "clients" with certain sexually transmitted diseases to seek out or use the services of a sex worker;
- (e) prohibition on seeking to induce a person to seek employment in the prostitution industry;
- (f) prohibition on prostitution services being offered as sponsorship;
- (g) various offences relating to child prostitution; and
- (h) restraining orders may be issued by the courts.

The Bill does not appear to affect the law relating to brothels.

17. Appendix 2 - Detailed description of the Various Regulatory Options

17.1 Performance Based Regulation

Performance based regulation, in contrast to traditional prescriptive regulation, specifies desired outcomes or objectives and not the means by which these outcomes or objectives must be met (e.g. the prescription of noise pollution limits for motor vehicles, or building regulations which specify the load capacity for beams rather than the specific material, e.g. hard wood, steel, etc).

Performance based rules allow affected parties to choose the means of compliance to fulfil the stated objective. Individuals and firms are therefore able to seek out (and implement) the least-cost way of achieving the specified outcome. Moreover, the means of compliance can be readily adjusted in the light of technology and knowledge changes.

Examples of output standards used in Performance Based Regulations include:

- energy efficiency standards;
- fuel economy targets;
- food safety requirements;
- environmental standards or maximum pollution limits; and
- fuel economy targets.

Advantages of Performance Based Regulation:

- they can lower compliance costs;
- they promote greater flexibility in compliance;
- they provide greater flexibility may encourage greater compliance;
- they foster innovation and rapid adoption of new technology;
- they reduce government action in markets;
- they encourage the adoption of market-based solutions; and
- they reduce obstacles to competition.

Disadvantages of Performance Based Regulations:

- they may create uncertainty regarding acceptable compliance;
- associated guidelines may become a de facto set of prescriptive rules and/or create uncertainty as to what constitutes the law;
- it may be difficult to administer and monitor compliance;

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- they may favour larger firms with considerable resources available to develop alternatives; and
- a major one-off incident of non-compliance may result in pressure for more rigid, traditional regulations.

When to use Performance Based Regulation:

- when the rate of technological change in an industry is high;
- when there is a high level of understanding by affected parties of the problem being addressed;
- when supporting documentation (e.g. codes of practice) is easily available; or
- when incentives for compliance are strong because of a close alignment with consumer and community expectations, that is, when producers have the same incentives as consumers and the community.

Under this approach, performance based regulation or prescriptive regulation is not seen as separate, but rather as part of a continuum of regulatory options.

17.2 Co-Regulation

Under Co-Regulation the regulatory role is shared between government and industry body, or occupational representative. It is usually effected through legislative reference or endorsement of an industry body responsible for the competency assessment of an occupation.

Typically, co-regulation involves an industry organisation or a representative of a large proportion of the industry participants formulating a code of practice in consultation with government. The code is designed to ensure that breaches are enforceable via effective sanctions by the industry or professional organisation. This may be achieved by: (i) incorporating a code of practice by reference into regulations and creating associated offences and penalties for breaches; or (ii) providing broad performance-based regulations with the industry code of practice having a *deemed to comply* status, i.e. where adherence to the code is deemed compliance with the regulations.

Co-regulation enables the industry to take the lead in the regulation of its members by setting industry standards and encouraging greater responsibility for the performance of its own members. Co-Regulation also recognises (and utilises) the expertise and knowledge held within the industry/professional association.

Co-Regulation has long been adopted in relation to professions such as lawyers and engineers.

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Advantages of co-regulation:

- the expertise of the industry or professional associations can be more fully and directly utilised;
- it encourages the industry or professional association to take greater responsibility for the behaviour of its members;
- it reduces the requirements for government resources to be dedicated to regulation;
- industry sanctions can be given legislative backing;
- it promotes independence and accountability of the professions or industry; and
- it allows industry participants to rule on matters best determined by peer groups.

Disadvantages of co-regulation:

- unintended monopoly power gained by market participants could restrict competition;
- it may reduce the diversity of services or products provided by the industry or profession;
- it could raise barriers to entry, such as standards or education requirements;
- agencies may become captured by industry interests, promoting the interests of that group at the expense of the community at large; and
- it could reduce competition within the industry.

When to use co-regulation:

- when strong industry associations with broad coverage are present;
- when industry assessment is able to be easily conducted;
- when there is a large commonality of skills within the industry;
- when incentives or interests are aligned, i.e. they are self-enforcing;
- when self-enforcement is possible; or
- when professional independence is a major consideration.

Given the development of industry standards that has already taken place, comment is invited on the scope for greater use of codes of practice developed with, and by, the Liquor Industry, to address key areas of liquor administration.

17.3 Extending the Coverage of General Legislation

If essential facilities or procedures are already provided by an existing legislative regime, it may be more efficient to extend the application of that legislation to related concerns rather than have them duplicated. For example, if enforcement mechanisms (e.g. inspections, reporting requirements etc.) already exist for manufacturers or suppliers of certain types of drugs or poisons, these might be efficiently and effectively applied to alternative medicines. This approach is also likely to assist in ensuring the consistency of government action in the treatment of issues with similar concerns.

Advantages of extending the coverage of general legislation:

- it eliminates unnecessary duplication of a proven legislative framework;
- it enables the existing legislative framework to be better utilised;
- it promotes consistent treatment of related issues or concerns;
- it saves resources and costs associated with developing an alternative or parallel framework; and
- existing legislation may be well understood, thus promoting a high level of compliance.

Disadvantages of extending the coverage of general legislation:

- the seriousness of the problem may warrant specific regulation which addresses the particular circumstances of the case;
- it may result in legislation that is too complex;
- current resources may not be able to deal adequately with all new matters covered by the legislation;
- it may still be necessary to introduce separate legislation so as to signal the seriousness with which the government views the problem;
- it may not be as flexible as other options when technology is changing rapidly; and
- it still may not adequately resolve the problem.

When to extend the coverage of the general legislation:

- when existing laws are pertinent to the issue being addressed;
- when existing legislation is comprehensive and well understood; or
- when extending existing legislation can be achieved with minimum cost or difficulty.

17.4 Increased Enforcement

Closely related to the option of extending the coverage of general legislation is the possibility of relying on increased enforcement of existing general provisions. This option should be considered when there is an awareness of relatively low levels of compliance, perhaps among particular groups. In such cases introducing stricter requirements with no change to enforcement is likely to be both ineffective and bring the law into disrepute.

Increased enforcement does not necessarily increase the existing regulatory burden nor does it necessarily equate to an additional human resource commitment. It may simply require an upgrade of existing enforcement mechanisms or a more encompassing ambit. This option is particularly relevant for long standing enforcement mechanisms given that technology could have changed thus allowing for those enforcement mechanisms to be reconsidered or re-engineered.

Advantages of using increased enforcement:

- it can increase a regulation's effectiveness without increasing its complexity;
- it may be the appropriate response to allow for the adoption of new technology for enforcement mechanisms;
- it demonstrates a credible threat, that is, penalties for non-compliance will actually be imposed which prevents the law being brought into disrepute; and
- it can be used to increase compliance and therefore increase desirable behaviour of individuals or firms.

Disadvantages of using increased enforcement:

- the problem being addressed may not be able to be solved simply by increasing enforcement mechanisms;
- increased enforcement may require an unacceptably high cost, either directly or indirectly, without necessarily delivering the benefits;
- it may increase the need for additional resources to administer increased prosecutions; and
- the particular problem may necessitate that a government takes *visible and decisive* action.

When to use increased enforcement:

- when technology changes rapidly;
- when too many breaches are occurring;
- when it is cost effective to do so; or
- when costs of non-compliance are great.

17.5 Tradeable Permits / Licences

Tradeable permits are government-issued permits or licences that grant a tradeable property right to the holder, i.e. they grant the holder the right of use of a material or resource or the right to engage in a particular activity and they can be bought or sold. These permits can encourage an efficient allocation of resources and a market based solution to environmental and distributive concerns.

Generally, governments will make available a fixed supply of permits or licences, which would be consistent with a desired level of output. The initial allocation of permits is generally by way of public tender, although this may be varied to acknowledge existing rights or practices. Under a tender system firms wishing to participate in the market are then required to bid for a permit or licence which enables them to pursue their production strategies, for example how many fish they can catch or how much pollution they can emit.

Tradeable permits can force firms to internalise (pay for) the external costs that their production places on society. This cost will be passed on to consumers in greater or lesser degree depending upon the nature of demand for the firm's products. As a result, adverse effects of production, such as pollution or over fishing, are somewhat offset by the cost of the permit.

Difficulties may arise when determining the optimum level or supply of permits. Tradeable permits may increase (to some extent) the level of market power for participating firms or individuals. This would need to be carefully considered if such a system was proposed.

Finally, it should be noted that it may still be necessary to use prescriptive regulations in conjunction with tradeable permits for a particular policy prescription to operate effectively. For example, if the least-cost technologies likely to be used by participants would cause certain damage to delicate ecosystems, then the necessary standard to protect that ecosystem whilst still allowing the permits to be effective should be prescribed (e.g. prescribing the size of the nets that trawlers can use).

Advantages of tradeable permits:

- they provide an efficient and equitable mechanism to require firms and individuals to internalise their external costs;
- they encourage the adoption of least cost technologies;
- they provide financial incentives for firms to engage in desirable behaviour, thereby protecting the environment and/or the resource;
- they allow for the achievement of multiple objectives, e.g. sustainability of environmental resources and the viability of an industry reliant on access to the resource;
- they reward firms and individuals that have more stringent controls than the permits require and punish those that do not; and
- they can be self-enforcing.

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Disadvantages of tradeable permits:

- they can limit the number of participants in an industry and therefore reduce competition;
- they can represent a cost to entry;
- information deficiencies regarding what entails a sustainable harvest may introduce a degree of subjectivity into the permits;
- excessive rents (monopoly profits) may accrue to participants; and
- problems may arise when attempting to establish and monitor the schemes.

When to use tradeable permits:

- when the market and the market participants can be easily identified;
- when the rights involved can be legally specified;
- when the method for trade or exchange can be adequately defined;
- when transaction costs (those costs associated with the trade, e.g. fees or legal requirements) are low;
- when a competitive market can be sustained, thus limiting market power of incumbents;
- when monitoring of usage is feasible; or
- when the desired level or output is measurable and that measurement is cost-effective.

17.6 Voluntary Codes / Industry Self Regulation

Generally, voluntary codes of practice or industry self regulation describe the types of actions or procedures, as determined by the particular industry or profession, that are believed to be acceptable within the peer group and the wider society. They can range from simple statements of intent to rules of professional conduct and are applicable in a wide cross-section of the economy.

Voluntary codes or self regulation maximise flexibility and the involvement of the profession or industry. They also harness the expertise and market and social power of the industry in formulating the code or agreement. This approach allows for easy adjustment by industry participants to changes in the nature of the industry or occupation. It also reduces the need for and the cost of government resources spent administering a regulatory framework.

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For regulation to be successful there must be sufficient market power and commonality of interest within an industry to deter non-compliance. This is because industry self regulation or voluntary codes have no legal authority to ensure compliance. In fact, compliance is achieved through the individuals desire to uphold the reputation of the profession, along with the desire to avoid the sanction of peers and colleagues, rather than through threat of legal redress.

Codes of practice are usually developed via a consultative process between all interested parties in a particular industry and, in many cases with Government. This ensures that the code is operationally practical and consistent with those interested parties' objectives.

Examples of voluntary codes include:

- banking code of conduct;
- oil code;
- electronic funds transfer code;
- environmental code of practice for packaging;
- code of practice for environmental marketing by personal hygiene products industry;
- advertising code of conduct;
- media code of ethics; and
- food hygiene code for catering, temporary premises and vehicles.

Advantages of voluntary codes and self-regulation:

- they are more likely to be observed because they are made by those to whom they apply;
- they utilise the insiders expertise and experience in the formulation of codes or agreements;
- they can be more responsive and flexible than regulation with changes and updating occurring more often;
- they can allow for innovative behaviour of industry participants;
- they have the agreement of major industry participants and therefore awareness and compliance is likely to be higher;
- they provide a market solution for the regulation of ethical behaviour;
- they are cheaper for governments to develop and monitor, as those being regulated bear the cost of regulating; and
- they may provide a dispute resolution mechanism, via independent arbitrators, the ombudsman, or industry councils.

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Disadvantages of voluntary codes and self-regulation:

- there are no legal remedies for breaches of the code or agreement;
- they could be used to promote anti-competitive behaviour;
- they impose monitoring costs which are incurred by the industry or professional association;
- compliance may be low if a sense of commonality amongst those affected is not present; and
- they may implicitly create barriers to trade.

When to use voluntary codes or self-regulation:

- when there is sufficient power and commonality of interest within an industry to deter non-compliance; or
- when the cost of non-compliance is small.

17.7 Negative Licensing

This would involve the creation of legislative provisions the breach of which would entitle a regulatory authority to obtain an order from a court or tribunal. Such an order may ban the person from participating in the occupation or industry. There is no actual licence.

Negative licensing is designed to ensure that individuals or manufacturers who have demonstrated by their prior action that they are incompetent or irresponsible are precluded from operating in a particular industry. As a result, the most egregious offenders against the set standards are removed from the industry or profession without, at the same time, placing an undue burden of registration on the entire industry or profession.

Negative licensing may be preferred where there is an intention to exclude individuals and firms with certain characteristics (e.g. serious criminal convictions) rather than to specify via regulations any positive requirements for licensing, such as educational requirements. They also have the advantage that they do not require administrative registration or certification requirements of industry participants and therefore present few barriers to occupational mobility or entry.

Advantages of negative licensing:

- it does not require administrative registration or personal certification;
- negative licensing imposes fewer costs on participants which should result in lower prices for consumers;
- costs of entry are lower; and

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- dominant industry bodies can not seek to restrict competition by setting too stringent conditions of entry.

Disadvantages of negative licensing:

- as no screening occurs the number of inappropriate participants initially entering an industry may be higher than under the registration process;
- some agents may be able to operate undetected or act inappropriately before they are detected. That is, licence removal will only occur after the detection of a breach;
- the screening process relies on objective evidence of qualification, experience or judgement of character which may not be reliable indicators of future inappropriate behaviour, particularly dishonesty; and
- enforcement activities may need to be increased, thereby increasing monitoring costs.

When negative licensing should be used:

- when there are tiers of regulation for any particular sector;
- when monitoring requirements are low; or
- when screening processes are already carried out by some other organisation or law.

An example in the Northern Territory of a negative licensing scheme is the scheme in place under the *Consumer Affairs and Fair Trading Act* for credit providers. Under that Act anyone can be a credit provider. However, the Commissioner of Consumer Affairs may seek a banning order from the Local Court if a person acting as a credit provider breaches rules in the *Consumer Affairs and Fair Trading Act* or in the *Credit Code*.

17.8 Public Education Programs

Research on regulatory compliance and the practical experience of regulators show that non-compliance with the requirements of regulations is sometimes the result of ignorance rather than any intentional desire to flout the law. Where the problem to be addressed results from a lack of knowledge amongst consumers, or participants in an industry, then an education program should be considered.

An education campaign is likely to be successful where the target group can be easily identified and reached economically. Approaches to achieve this include advertising in industry magazines and newspapers, distributing information brochures in areas where the problem exists, soliciting community groups or associations to disseminate information, or targeting mail-outs to affected groups.

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Advantages of a public education program:

- it is a quick method of disseminating information about compliance requirements;
- it may reduce costs to the government and the community via a higher level awareness of issues of concern;
- it may reduce resources expended on implementing regulatory programs and ongoing enforcement; and
- it can be used to educate the community about the virtues of a particular policy and therefore increase compliance.

Disadvantages of a public education program:

- it may be less effective than other regulatory approaches as it relies on voluntary compliance rather than being supplemented by the element of coercion;
- the community can become desensitised or weary of messages thereby reducing the effectiveness of educational campaigns; particularly if the problem is long-term;
- target groups may not be easily identified; and
- public interest may warrant further action than just education, particularly when the issue being regulated is of a serious nature.

When to use a public education program:

- when the problem results from a lack of information;
- when non-compliance is the result of misinformation or lack of information;
- when target audiences can be easily and economically reached;
- when the virtues of a particular policy are not well understood; or
- when a light-handed approach would be more appropriate.

17.9 Information Disclosure

Information disclosure is closely related to public education programs. This alternative requires information about the attributes of products or processes to be disclosed (e.g. hazardous substances in use). Information disclosure does not directly seek to prohibit or regulate the consumption of a good or service, but tries to ensure that the public is made aware of all the pros and cons of using the products.

Two basic approaches to information disclosure exist: private, in which producers are required to disclose information to consumers; and public, in which governments collect and disclose information to the public.

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Examples of information disclosure include:

- publication in a newspaper of the findings of health inspectors, intended to provide a strong incentive for restaurants to maintain appropriate hygiene standards; and
- prospectus requirements enforced by the Australian Securities and Investment Commission.

Advantages of information disclosure:

- it attempts to influence user behaviour without necessarily forbidding it;
- it facilitates informed decision making by consumers;
- it may promote high quality goods, services and quality; and
- it can often preserve the opportunity for innovation.

Disadvantages of information disclosure:

- it may not result in the change in behaviours originally envisaged;
- the information necessary could be too technical, such as information on contents of drugs; and
- it may not be perceived as responsive enough.

When to use information disclosure:

- when consumers do not possess full information, i.e. information asymmetry exist;
- when ignorance or lack of understanding is an element of non-compliance;
- when it is in the public interest; or
- when the likely benefits (in terms of impact or behaviour) exceeds the cost of the information provision.

17.10 Rewarding Good Behaviour

Traditional command-control approaches to regulation do not acknowledge or reward compliance with regulations. Accordingly, industries with good track records are penalised for non-compliance on the same basis as firms that frequently breach the law. Hence regulations tend to be focused on the most egregious offenders. This can mean that regulations sometimes place too onerous monitoring and reporting requirements on complying industry participants in order to capture those offenders.

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As a consequence, it is possible to consider regulatory programs that provide the opportunity to reward good behaviour, while penalising bad behaviour. Firms that can show a consistent record of compliance with the regulations could be rewarded. Such rewards could include a reduction of the number of licences required, a lowering of the frequency of random audits, the allowance of self-regulation, or by reducing other burdens.

Advantage of rewarding good behaviour:

- provides economic incentives which encourage compliance;
- sends appropriate signals to the community about government priorities; and
- constitute a move away from prescriptive regulation towards performance based regulation.

Disadvantage of rewarding good behaviour:

- if rewards are made too generous then they could become de facto subsidies to firms; and
- if rewards decrease monitoring then this could result in greater non-compliance.

When to reward good behaviour:

- when such economic incentives are likely to increase the incidence of good behaviour.